

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM J. VREDENBURG SR.

Claimant

VS.

U.S.D. NO. 259

Self-Insured Respondent

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Docket No. 270,220

ORDER

Respondent requested review of the April 2, 2004 Award by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on October 19, 2004.

APPEARANCES

Charles W. Hess of Wichita, Kansas, appeared for the claimant. Gary K. Albin of Wichita, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. At oral argument before the Board, the parties agreed that, although the Administrative Law Judge (ALJ) incorrectly used a different figure to calculate the award, the claimant's stipulated average gross weekly wage was \$589.63.

ISSUES

It was undisputed claimant suffered a work-related accident as a result of a fall arising out of and in the course of his employment. Respondent agreed the claimant injured his lumbar spine but the extent of the resulting impairment was contested. It was disputed whether claimant also suffered a cervical spine injury and bilateral carpal tunnel syndrome as a result of his fall at work.

The ALJ determined claimant suffered injury to both his lumbar and cervical spine as a result of his fall at work. The ALJ further determined claimant suffered bilateral carpal

tunnel syndrome as a result of his fall at work or his continued work activities. The ALJ found the claimant suffered a 5 percent permanent partial functional impairment for the lumbar injury; a 15 percent permanent partial functional impairment for the cervical injury; and, a 12 percent permanent partial whole person functional impairment for bilateral carpal tunnel syndrome. The three functional impairment findings were combined to award claimant a 29 percent permanent partial whole person functional impairment.¹

The sole issue raised on review is the nature and extent of disability.

Respondent argues the claimant's cervical and bilateral carpal tunnel injuries were not related to the traumatic slip and fall work-related injury. Respondent further argues the claimant is only entitled to a 2.5 percent functional impairment as a result of his lumbar spine injury.

Claimant argues the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The claimant, a 35-year employee for the respondent's school district, was employed driving a truck delivering carts of prepared meals to schools in the district. Claimant would load the carts into the truck and then unload the carts at various schools within the district. After making his morning deliveries, the claimant would spend approximately 40 minutes washing dishes at Wilber Junior High School and then return to the schools and pick up the empty food carts for return to the centralized food service location.

On February 27, 2001, the claimant was getting out of the truck at Wilber Junior High School and slipped on the truck step which had ice on it. As claimant fell he put his hands behind his head to keep his head from hitting the ground. The school custodian, a teacher and the school nurse came to claimant's assistance. They helped claimant into a wheel chair because claimant could not move his left leg. Initially, claimant's complaints were limited to his left hip and low back. Claimant agreed that after the slip and fall he did not have any complaints of neck or bilateral wrist pain.

Claimant was first treated by Dr. Daniel Lygrisse who provided diagnostic testing and recommended a course of physical therapy. Claimant also sought treatment on

¹ The award paragraph refers to a 29 percent work disability but claimant returned to his job with respondent and the award was for claimant's functional impairment.

February 28, 2001, with his personal physician, Dr. James I. Fast, a board certified family practice physician. Claimant noted he was very sore with complaints of left hip pain.

The respondent referred claimant for treatment with Dr. John P. Estivo. On April 16, 2001, the claimant complained of lumbar pain with no complaints of cervical pain. Dr. Estivo diagnosed claimant with lumbar spine pain with occasional radiculopathy. An MRI of the lumbar spine was ordered which revealed a bulging disk at L4-5.

On April 27, 2001, claimant still complained of lumbar spine pain and left rib pain. Claimant did not complain of either cervical, shoulder or upper extremity pain. However, at the May 18, 2001 office visit with Dr. Estivo the claimant noted his ribs and lumbar spine pain had resolved but that he had cervical spine pain with an onset the week before May 18, 2001. Dr. Estivo concluded the cervical spine complaints were not related to the slip and fall incident because there was over a two month period before the onset of cervical pain complaints. Dr. Estivo released claimant to return to work without restrictions and opined claimant had not suffered any permanent impairment as a result of the slip and fall incident.

Claimant had continued to receive treatment from his personal physician for complaints unrelated to the slip and fall at work. However, at an office visit with Dr. Fast on May 16, 2001, claimant complained of pain radiating into the right shoulder which the doctor noted was indicative of either a herniated or bulging disk in the cervical spine. The doctor further opined such condition was probably related to the fall at work. In a follow-up visit on May 22, 2001, the claimant gave Dr. Fast a history that the cervical pain began within three or four weeks of the fall at work. Dr. Fast explained:

Q. During your examination of Mr. Vredenburg on May 22, 2001 did he discuss with you when he first started having these symptoms in his cervical spine?

A. Yes. He told me he thought it was about three to four weeks following the injury, although he tried to tough it out, he thought that - - I believe that he thought it would go away if he just continued taking anti-inflammatories and pain pills.

Q. Which he was taking for his back injury?

A. That's correct. And he kept on waiting and toughing it out and toughing it out and a month went by and nothing happened and about that time is when he called us and made that appointment.²

In an Order dated December 13, 2001, the ALJ designated Dr. Paul S. Stein to provide claimant with treatment for his cervical condition. Dr. Stein examined claimant on January 22, 2002, and noted claimant continued to complain of lower back pain and pain

² Fast Depo. at 15.

from the neck into the right shoulder and arm down to the thumb. An EMG revealed some carpal tunnel entrapment of the median nerves as well as nerve root irritation in the neck. Claimant was referred to Dr. Amrani who performed a cervical discectomy and fusion on claimant in June 2002. Approximately six months after surgery, the claimant returned to his regular job duties working for respondent.

Respondent initially argues the delay in the onset of claimant's cervical complaints was too long for that condition to be caused by the fall at work.

Dr. Estivo testified claimant's cervical complaints were not related to the fall at work on February 27, 2001. The doctor based his opinion on the fact that claimant had told the doctor that he did not hurt his neck in the fall. And the claimant described the onset of his cervical complaints as approximately two months after the accident which the doctor concluded was too long a time period to relate the condition to the accident at work.

Dr. Stein was unable to state whether the cervical complaints were related to the fall at work. The doctor noted the onset of symptoms approximately two months after the injury was a little longer than would be anticipated but the doctor further noted the impact was sufficient to have affected claimant's neck. And when provided Dr. Fast's notes which indicated claimant had cervical complaints within a few weeks of the accident, Dr. Stein stated that under those facts the cervical injury would, more likely than not, be related to the fall at work.

Drs. James I. Fast, C. Reiff Brown and Philip R. Mills all concluded claimant's cervical complaints were the result of his fall at work. Dr. Brown testified claimant's fall caused the herniation in his cervical spine and that herniations are frequently progressive conditions which are not symptomatic for a period of time after the injury. Dr. Mills agreed the type of accident claimant suffered was sufficient to cause cervical injury and although the delay in symptoms was atypical, the fall was the best explanation for claimant's cervical condition. Dr. Fast also concluded the fall explained claimant's cervical complaints. Dr. Fast testified:

Q. Based upon your discussions with Mr. Vredenburg on May 16, 2001 and based on the results of your physical examination do you have an opinion regarding whether or not Mr. Vredenburg's work accident of February 27, 2001 caused this cervical injury?

A. Well, I have to believe it had a proximate cause because he had never had this kind of a pain before and never having ever complained of anything like this he and I both were quite surprised that he had this severe pain and he hadn't had any injury since that time so I said, you know, William, this could be relating back and he said, well, it's the only thing that's happened to me.³

³ Fast Depo. at 14-15.

In summary, Drs. Fast, Brown and Mills concluded the claimant's cervical condition was the result of his fall at work. Dr. Stein also agreed the fall caused the cervical condition if the onset of cervical symptoms began within a few weeks after the accident as indicated in Dr. Fast's medical notes. The ALJ concluded the claimant's cervical injury was causally related to the February 27, 2001 fall at work. The Board agrees and affirms.

Respondent next argues that claimant's bilateral carpal tunnel syndrome was not caused by the fall at work. As previously noted, when claimant was referred to Dr. Stein for treatment for his cervical complaints, diagnostic studies revealed claimant had carpal tunnel syndrome.

Dr. Stein concluded the carpal tunnel syndrome was not related to the fall at work. The doctor noted claimant had placed his hands behind his head when he fell and neither his head nor his hands struck the ground. Therefore, the doctor concluded claimant did not suffer traumatic carpal tunnel syndrome.

At claimant's attorney's request, Dr. Brown examined the claimant on February 10, 2003. Dr. Brown concluded the carpal tunnel syndrome was the result of the claimant's fall at work or his continued work activities for respondent. But Dr. Brown admitted claimant did not suffer a traumatic carpal tunnel syndrome as a result of the fall at work. And Dr. Brown's report noted there would be controversy regarding the cause of the carpal tunnel syndrome because claimant did not suffer a traumatic injury and did not present with the usual history consistent with an overuse type of carpal tunnel injury.

Both Drs. Stein and Brown concluded claimant's fall did not result in traumatic carpal tunnel syndrome. The Board finds Dr. Stein's opinion more persuasive that claimant has failed to meet his burden of proof that the carpal tunnel syndrome was caused by a traumatic injury and claimant has further failed to meet his burden of proof to establish the condition was the result of overuse activities at work.

Drs. Mills, Brown and Stein all opined claimant suffered a 5 percent permanent partial functional whole person impairment for his lumbar spine. Conversely, Dr. Estivo opined claimant did not suffer any permanent impairment to his lumbar spine. The ALJ concluded claimant suffered a 5 percent functional impairment to his lumbar spine. The Board agrees and affirms.

Dr. Brown determined claimant met the requirements for DRE Cervicothoracic Category III and accordingly opined claimant suffered a 15 percent permanent partial functional whole person impairment as a result of his cervical injury. Conversely, Dr. Stein used the range of motion guidelines and determined claimant suffered an 18 percent permanent partial functional whole person impairment as a result of his cervical injury. The ALJ awarded claimant a 15 percent permanent partial whole person functional impairment for his cervical injury. The Board agrees and affirms that finding.

Combining the 15 percent impairment for the cervical spine injury with the 5 percent impairment for the lumbar spine injury results in an award of a 19 percent permanent partial whole person functional impairment.

The Board modifies the ALJ's award to reflect claimant failed to meet his burden of proof that he suffered bilateral carpal tunnel syndrome as a result of a work-related injury.

All other findings and conclusions contained within the ALJ's Award are hereby affirmed to the extent they are not modified herein.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated October 19, 2004, is modified to reflect claimant suffered a 19 percent permanent partial whole person functional impairment.

The claimant is entitled to 38 weeks of temporary total disability compensation at the rate of \$393.11 per week or \$14,938.18 followed by 74.48 weeks of permanent partial disability compensation at the rate of \$393.11 per week or \$29,278.83 for a 19 percent functional disability, making a total award of \$44,217.01, which is due, owing and ordered paid in one lump sum less amounts previously paid.

IT IS SO ORDERED.

Dated this _____ day of November 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Charles W. Hess, Attorney for Claimant
Gary K. Albin, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director